

1 HELANE L. MORRISON (Cal. Bar No. 127752)
JAMES A. HOWELL (Cal. Bar No. 92721)
2 (howellj@sec.gov)
ROBERT S. LEACH (Cal. Bar No. 196191)
3 (leachr@sec.gov)
ERIN E. SCHNEIDER (Cal. Bar No. 216114)
4 (schneidere@sec.gov)

5 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
6 44 Montgomery Street, Suite 2600
San Francisco, California 94104
7 Telephone: (415) 705-2500
Facsimile: (415) 705-2501
8

9
10 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 SECURITIES AND EXCHANGE COMMISSION,

14 Plaintiff,

15 vs.

16 GROH ASSET MANAGEMENT, INC. and ROGER
17 O. GROH,

18 Defendants.
19

Case No. _____

COMPLAINT FOR VIOLATION OF AN
ORDER ISSUED BY THE SECURITIES
AND EXCHANGE COMMISSION

20 Plaintiff Securities and Exchange Commission (“Commission”) alleges:

21 **SUMMARY**

22 1. This is an action to enforce a validly issued order by the Commission. On September
23 30, 2004, following an investigation, the Commission instituted an administrative proceeding against
24 Groh Asset Management, Inc. (“GAM”) and its president, Roger O. Groh (“Groh”), based upon their
25 violations of certain provisions of the Investment Advisers Act of 1940 (the “Advisers Act”). GAM
26 and Groh consented to an order by the Commission that required, among other things, that they pay a
27 \$45,000 civil penalty and that GAM perform certain remedial measures with respect to its investment
28 advisory business, including retaining an independent consultant for five years to review its

COMPLAINT

1 advertising and marketing materials as well as its and books and records. More than a year later,
2 GAM and Groh have failed to pay any part of the penalty and to comply with certain remedial
3 measures in the Commission's order.

4 2. Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)] provides that the
5 Commission may bring an action in federal district court to enforce compliance with a Commission
6 order issued under the Advisers Act. The Commission seeks such relief here.

7 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

8 3. The Court has subject matter jurisdiction over this action pursuant to Sections 209(d)
9 and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d); 80b-14].

10 4. Venue in this Court is proper pursuant to 15 U.S.C. § 80b-14 and 28 U.S.C. §
11 1391(b)(1) because both GAM and Groh reside and transacted business in this judicial district.

12 5. Assignment to the San Francisco Division of this Court is proper because a substantial
13 part of the events or omissions giving rise to claims alleged in this Complaint occurred in San
14 Francisco and Marin counties.

15 **DEFENDANTS**

16 6. Defendant GAM is a California corporation based in San Francisco. GAM is an
17 investment adviser registered with the Commission since September 19, 1991. According to its most
18 recent filing with the Commission describing its investment advisory business, GAM had total assets
19 of more than \$5 million.

20 7. Defendant Groh resides in Sausalito, California. He is the president, founder, owner,
21 and sole portfolio manager of GAM. Groh also owns or owned Montgomery Global Advisors V,
22 LLC ("Montgomery"), which until March 2005 was registered with the Commission as an investment
23 adviser.

24 **CLAIM FOR RELIEF**

25 8. On September 30, 2004, the Commission instituted an administrative proceeding
26 against GAM and Groh finding that they fraudulently overstated GAM's assets under management to
27 third parties and failed to keep certain books and records as required by the Advisers Act. *See* Order
28 Instituting Administrative and Cease-And-Desist Proceedings, Making Findings, and Imposing

1 Remedial Sanctions and a Cease-and-Desist Order, In the Matter of Groh Asset Management, Inc.
2 and Roger O. Groh, Administrative Proceeding File No. 3-11691 (Exhibit A). As part of a
3 settlement, GAM and Groh consented to this order and had actual notice of it.

4 9. The order required GAM and Groh to jointly pay a \$45,000 civil penalty to the United
5 States Treasury by March 29, 2005. *See* Exhibit A, § IV.C.

6 10. The order also placed certain limitations on the activities, functions, and operations of
7 GAM's investment advisory business to remedy GAM's advertising and books-and-records
8 violations. Specifically, the order required GAM to retain, at its expense, an independent consultant
9 to review aspects of GAM's investment advisory business and make recommendations. The order
10 obligated GAM to implement the independent consultant's recommendations. Additionally, the order
11 provides that, for a five-year period, GAM shall require the independent consultant annually to
12 review GAM's advertising and books and records and to monitor GAM's compliance with the
13 advertising and books-and-records provisions of the Advisers Act. *See* Exhibit A, § IV.D.6.

14 11. And, the order required GAM to provide, for a period of twelve months following the
15 order, a copy of the order to all prospective advisory clients. *See* Exhibit A, § IV.D.10. GAM was to
16 notify the Commission staff by October 31, 2005 that it had complied with that provision of the
17 order. *See id.*

18 12. GAM and Groh have failed to comply with the order. GAM's independent consultant
19 resigned on September 6, 2005 because of non-payment, and GAM has not engaged a replacement.
20 GAM has not notified the Commission staff whether or not it provided a copy of the order to all
21 prospective clients during the last twelve months. Finally, neither GAM nor Groh have paid any part
22 of the \$45,000 civil penalty.

23 13. By reason of the foregoing, GAM and Groh violated, and unless enjoined, will
24 continue to violate the terms of the Commission's order, which is enforceable by this Court pursuant
25 to Section 209(d) of the Advisers Act.
26
27
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the Commission respectfully requests that the Court:

3 I.

4 Issue findings of fact and conclusions of law that GAM and Groh violated the order as alleged
5 above.

6 II.

7 Enter judgment for the Commission and against defendants, pursuant to Section 209(d) of the
8 Advisers Act, ordering (1) GAM and Groh to pay within fourteen (14) days the \$45,000 civil
9 penalty; (2) GAM to comply with all other provisions of the order, including the provisions that
10 GAM retain for a five-year period an independent consultant to review annually its advertising and
11 marketing materials and its supporting books and records made and maintained (or required to be
12 made and maintained) under the Advisers Act and that GAM require the independent consultant to
13 monitor its compliance with the advertising and books-and-records sections of the Advisers Act; (3)
14 GAM to notify the Commission staff whether or not it provided a copy of the order to all prospective
15 clients during the twelve months following the order; and (4) GAM to comply with all obligations
16 under the order that may arise in the future.

17 III.

18 Retain jurisdiction of this action in accordance with principles of equity and the Federal Rules
19 of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be
20 entered, or to entertain any suitable application or motion for additional relief within the jurisdiction
21 of this Court.
22
23
24
25
26
27
28

VII.

Grant such other and further relief as the Court may deem appropriate.

Dated: January 19, 2006

Respectfully submitted:

By: _____
Helane L. Morrison
James A. Howell
Robert S. Leach
Erin E. Schneider

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION